STATE OF MICHIGAN

COURT OF APPEALS

MARY YOUNG,

Plaintiff-Appellant,

v

PHILIP J. THOMAS and MICHIGAN ATTORNEY GRIEVANCE COMMISSION,

Defendants-Appellees.

UNPUBLISHED
March 3, 2000

No. 209673
Wayne Circuit Court
LC No. 97-705694-NZ

Before: Bandstra, P.J., and Holbrook, Jr. and Fitzgerald, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10) in this action in which plaintiff alleged sex discrimination in violation of the Michigan Civil Rights Act, MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq.*, and handicap discrimination in violation of Michigan's Handicappers' Civil Rights Act (HCRA), MCL 37.1101 *et seq.*; MSA 3.550(101) *et seq.* We affirm.

On appeal, a trial court's grant of summary disposition will be reviewed de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). This Court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in the light most favorable to the nonmoving party to determine whether the movant was entitled to judgment as a matter of law. *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999); *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998).

During plaintiff's employment at the Attorney Grievance Commission (AGC), defendant Thomas served as the grievance administrator. Thomas hired plaintiff as an office clerk on July 6, 1992. In late 1995, plaintiff told Thomas she suffered from rheumatoid arthritis. It is undisputed that Thomas was initially pleased with plaintiff's performance, as evidenced by her performance evaluations. Plaintiff's performance appears to have begun deteriorating just after Thomas fired plaintiff's niece on July 8, 1996. Because of his concern regarding plaintiff's demeanor and relations with coworkers since her niece's firing, Thomas met with plaintiff on July 24, 1996. After what he perceived as a denial by plaintiff that she had been discourteous to coworkers or accused them of conspiring to get her niece fired, Thomas sent plaintiff home for three days with pay. On October 30, 1996, Thomas sent plaintiff a memorandum reprimanding her for being late for work six times that month. During a meeting on October 31, 1996, to discuss plaintiff's concerns about disparate treatment of men and women with respect to the AGC's tardiness policy, Thomas terminated plaintiff's employment after plaintiff refused to acknowledge that the reprimands concerning her tardiness were appropriate.

I

Plaintiff first argues that the trial court erred by summarily disposing of plaintiff's handicap discrimination claim. She alleges that the evidence on the record was sufficient to establish a genuine issue of fact regarding

whether she was discharged because Thomas wanted to avoid granting her time off in the future as a result of her rheumatoid arthritis. We disagree.

To establish a prima facie case of employment discrimination in violation of the HCRA, a plaintiff must establish that: (1) she is "handicapped" as defined in the act; (2) her handicap is unrelated to her ability to perform the duties of her job; and (3) she has been discriminated against in one of the ways set forth in the statute. MCL 37.1202; MSA 3.550(202); *Rollert v Dep't of Civil Service*, 228 Mich App 534, 538, 579 NW2d 118 (1998). Here, the relevant section of the statute is MCL 37.1202(1)(b); MSA 3.550(202)(1)(b), which provides that an employer shall not:

> (b) Discharge or otherwise discriminate against an individual with respect to compensation or the terms, conditions, or privileges of employment, because of a handicap that is unrelated to the individual's ability to perform the duties of a particular job or position.

The HCRA defines the term "handicap" as:

> (i) A determinable physical or mental characteristic of an individual, which may result from disease, injury, congenital condition of birth, or functional disorder, if the characteristic:
>
> (A) . . . substantially limits 1 or more of the major life activities of that individual and is unrelated to the individual's ability to perform the duties of a particular job or position or substantially limits 1 or more of the major life activities of that individual and is unrelated to the individual's qualifications for employment or promotion. [MCL 37.1103(e)(i)(A); MSA 3.550(103)(e)(i)(A).]

To be considered a disability under the act, the condition must impair a major life activity. According to plaintiff, although she could paint for hours at a time, she could no longer garden, use a shovel, get down on her knees, walk a lot, or lift things. To support her contention that Thomas fired her, in part, to avoid additional accommodation of her medical condition, plaintiff cites her July 1, 1996, performance evaluation form, on which Thomas gave her an excellent rating, but stated that he doubted whether he could continue to be as flexible about plaintiff's medical needs. Defendants responded to plaintiff's claim of handicap discrimination by stating that plaintiff was fired because of insubordination in response to being reprimanded for tardiness, rather than because of her alleged handicap.

The requirement that a condition must affect a major life activity to be considered a handicap under the HCRA is to be stringently applied. Our Supreme Court recently noted that limiting the HCRA's protection to individuals having conditions that actually impose substantial limitations preserves the high purpose of the act. *Chmielewski v Xermac, Inc*, 457 Mich 593, 609; 580 NW2d 817 (1998). Plaintiff has not demonstrated that her rheumatoid arthritis limited any major life activities because she offered no evidence that it substantially interfered with her ability to take care of herself, perform manual tasks, or engage in everyday activities like walking, seeing, hearing, speaking, breathing, learning, and working. *Stevens v Inland Waters, Inc*, 220 Mich App 212, 214; 559 NW2d 61 (1996). Although plaintiff testified that because of her rheumatoid arthritis she was unable to "walk a lot," the inability to "walk a lot" is distinguishable from the inability to walk.

Even assuming, without deciding, that plaintiff was handicapped under the HCRA, plaintiff failed to establish a prima facie case of handicap discrimination. Plaintiff's allegation that Thomas fired her because he knew she would require medical leave in the future was insufficient to rebut the evidence presented by defendant because mere speculation and inferences will not sustain a claim of intentional discrimination. *Clark v Uniroyal Corp*, 119 Mich App 820, 826; 327 NW2d 372 (1982). Therefore, the trial court properly granted summary disposition with respect to plaintiff's claim of handicap discrimination.

II

Next, plaintiff argues that the trial court erred in summarily disposing of her sex discrimination claim. We disagree. Count II of plaintiff's complaint alleges sex discrimination in violation of MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq.*, which provides that an employer shall not:

> (a) Fail or refuse to hire or recruit, discharge, or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment, because of religion, race, color, national origin, age, sex, height, weight, or marital status.

In order to avoid summary disposition plaintiff was required to establish a prima facie case of sex discrimination. *Town v Michigan Bell Telephone Co,* 455 Mich 688, 698; 568 NW2d 64 (1997). To establish a prima facie case of sex discrimination, (1) the employee must be a member of a protected class, (2) the employee must be subject to an adverse employment action, (3) the employee must be qualified for the position, and (4) similarly situated members of the opposite gender must have been unaffected by the employer's adverse conduct. *Id.* Plaintiff obviously satisfies the first two prongs, and defendants present no argument that plaintiff was not qualified for the clerical position she held. However, plaintiff failed to provide sufficient evidence that defendants engaged in disparate treatment because she failed to show that, for the same conduct, she was treated differently than any male employee.

Plaintiff's claim is based on comparison of herself to male employees whom she contends were also tardy. Defendants respond that plaintiff was not similarly situated to the male employees to whom she compares herself. One of the male employees to whom plaintiff compares herself was late, along with plaintiff, on October 30, 1996. Although plaintiff was reprimanded, the male employee was not. Defendants explained that the difference in treatment was the result of the fact that October 30, 1996, was the *sixth time that month* that plaintiff had been late and only the *first time that year* that the male employee had been late. Defendants also refute plaintiff's claim of disparate treatment on the basis of sex by pointing out that a male employee, Brian McGinn, was also fired because of his excessive tardiness. But, more importantly, defendants' articulated reason for firing plaintiff was not because of her tardiness, but because of her insubordination in reaction to being reprimanded for tardiness.

After a thorough review of the record, we conclude that plaintiff's evidence of pretext was insufficient to overcome defendants' motion for summary disposition because (1) plaintiff failed to show that defendants' articulated reason for firing her had no basis in fact and (2) plaintiff failed to show that there were similarly situated men who were treated differently. *Town, supra* at 698; *Feick v Monroe County,* 229 Mich App 335, 343; 582 NW2d 207 (1998).

Affirmed.

/s/ Richard A. Bandstra
/s/ Donald E. Holbrook, Jr.
/s/ E. Thomas Fitzgerald